

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
The American Radio Relay League's)
"REQUEST FOR DECLARATORY RULING") RM-9259
Titled "Compliance with Applicable Voluntary Band)
Plans in the Amateur Radio Service")

April 30, 1998

To: The Chief, Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission

cc: Chairman William E. Kennard
Commissioner Susan Ness
Commissioner Harold Furchgott-Roth
Commissioner Michael Powell
Commissioner Gloria Tristani

STATEMENT OF OPPOSITION TO
THE ARRL's REQUEST FOR DECLARATORY RULING

I am writing in opposition to the ARRL's request for a Declaratory Ruling from the Commission extending a default requirement present in the Commission's Rules that vaguely declares that all amateurs must operate in a manner consistent with "good amateur practice" to equate to adherence to "voluntary band plans" established on an ad hoc basis by various factions in the amateur community, effectively granting such band plans the force of Commission Rules.

This proposal is bad public policy for the Amateur service because it inherently promotes the blind maintenance of the status quo with respect to technology, modes of operation, and spectrum usage. This is contrary to the most fundamental purpose of the Amateur Radio Service, which is supposed to be a service dedicated to technical experimentation, invention, progress, and public service ... all of which will be negatively impacted should the Commission amend its Rules in the draconian fashion requested by the ARRL.

In addition, the ARRL has provided no evidence of any kind that a problem exists, that the voluntary nature of band plans is the source of the alleged problem, or that abandoning a longstanding tradition of voluntary band plans in favor of mandatory band plans will solve the alleged problem.

I have been a licensed, active radio amateur since 1975. I have been involved in most aspects of amateur radio including, but not limited to, satellite communications, HF operation, FM repeaters (including the construction of many such systems), digital packet radio operation, and especially in emergency communications and public service. I have operated both in the United States and, with licenses from the appropriate local authorities, in Mexico and several other Latin American countries. I am a member of the ARRL, TAPR, No-Code International (an international organization dedicated to the elimination of Morse code proficiency testing as a criteria for all licensing in the Amateur Radio Service), the IEEE, and the Radio Club of America (the oldest "by invitation only" organization of radio enthusiasts and professionals in the world). Additionally, I serve as a member of the Board of Directors of No-Code International.

Professionally, I have been employed for more than 25 years as an RF and communications systems engineer and equipment designer, both as an employee and as a consultant, to some of

the leading telecommunications equipment companies and research organizations in the world. I also hold two existing patents relating to radio communications and have several more pending.

I am an interested party in this Proceeding. My comments here are my individual comments, not comments filed on behalf of any organization to which I may belong or in which I serve in any official capacity.

1. The ARRL's request seeks to circumvent the public comment and discussion that clearly should precede any consideration of any such action that would virtually codify the status quo.

The ARRL has requested that the Commission issue a Declaratory Ruling saying that amateur operation that departs from that contemplated by existing, voluntary band plans violates the Commission's rules requiring amateur operations to adhere to "good amateur practices".

It is both enlightening and important to note that this attempt by the ARRL to cause the Commission to effectively amend and extend its Rules into the previously voluntary area of mode, function, and emission based "band plans" seeks to avoid the level of public comment and participation that such a change to the Commission's Rules deserves.

The Commission is to be highly commended for recognizing that this issue deserves much wider public discussion and comment than the ARRL would have apparently desired and for its decision to open this issue to public comments in the light of day.

2. The ARRL is not nearly as "representative" of the majority of the amateur population as it would have the Commission believe and its objective in this proceeding is not consistent with the best interests of the Amateur Radio Service as a whole.

While the ARRL attempts to characterize itself as "the national association of amateur radio operators" "representing" or "serving the interests of" all of the roughly 700,000 licensed amateurs in the United States, several significant facts to the contrary that the ARRL consistently chooses to neglect to mention in its representations to the Commission must be pointed out:

- The ARRL's membership constitutes less than 25% of U.S. licensed amateurs ... far from a majority of the U.S. licensees whose interests the Commission is mandated to consider (not to mention the interests of the public at large). This is statistically dismal compared to the membership to licensee ratios of many other countries' "national associations."
- Furthermore, the ARRL's membership, as a percentage of licensed amateurs in the U.S. has been dropping steadily in recent years.
- Even within the minority of U.S. licensees who are members of the ARRL, there exist significant numbers who, despite having considerable differences with the policies of the entrenched ruling faction of the ARRL, have continued membership in the ARRL in order to assure that there is at least some measure of progressive, dissenting opinion voiced within the ARRL, despite the fact that such dissenting opinion is consistently ignored.
- Virtually all growth in the Amateur Radio Service in recent years has occurred in and as a direct result of the relatively new "no-code" Technician class license and those licensees are demonstrably "not joining the ARRL in droves" ... in fact, the bulk of the ARRL's membership appears to consist of relatively long-time, chronologically older amateurs who, by coincidence of the licensing criteria in place at the time they entered the service, are code-tested, HF licensed "old-timers."
- The "fast-code," often strongly traditionalist, licensees of the General, Advanced, and Extra classes who dominate the ARRL's membership in fact constitute less than a plurality of U.S. licensees according to the Commission's own licensing records even if ALL of the licensees in those classes agreed 100% with the all of the ARRL's policies (which is clearly not the case ... many licensees in the three highest classes disagree to considerable degrees with the ARRL leadership's policies in a wide variety of issues relevant to the future of the Amateur Radio Service.)
- Other organizations exist within the amateur radio community and while their membership numbers may be notably smaller than those of the ARRL, they represent a variety of under-represented and diverse constituencies in an Amateur Radio Service that is itself very diverse in its interests and pursuits.

This Rulemaking proceeding is clearly just one of many instances where the ARRL "tail" should not be permitted to "wag the Amateur Radio Service dog."

Asserting that the ARRL's membership no longer constitutes or represents the majority of Commission licensees in the Amateur Radio Service should not be construed as an implication by this writer that the outcome of regulatory proceedings should be based simply (or even at all)

on a “popularity contest of the incumbent licensees.” That would clearly not be consistent with the Commission’s mandate and obligation to act in the best interest of the public at large. In the case of the Amateur Radio Service that mandate would seem best directed to reducing and eliminating unnecessary, restrictive regulations that pose roadblocks to experimentation with and rapid deployment of new technologies that will advance the amateur state of the art and put the amateur community in a better position to serve the public with modern, effective, and contemporarily useful public service and emergency communications. Adoption of the ARRL’s proposal would be in direct conflict with these goals.

3. The ARRL’s proposal would doom the Amateur Radio Service to a future of stagnation and lack of progress that is totally inconsistent with the Basis and Purpose of the Amateur Radio Service as set forth in the Commission’s Rules.

Such a Ruling would have the effect of virtually codifying the current status quo of technology and spectral usage within the amateur bands. This would have a tremendously stagnating effect on technical progress and the future adoption of new technologies in the Amateur Radio Service. It is immediately apparent that this would be contrary to the Basis and Purpose of the Amateur Radio Service, as outlined in Part 97.1 of the Commission’s Rules as follows:

97.1 Basis and purpose.

The rules and regulations in this part are designed to provide an amateur radio service having a fundamental purpose as expressed in the following principles:

- (a) Recognition and enhancement of the value of the amateur service to the public as a voluntary noncommercial communication service, particularly with respect to providing emergency communications.
- (b) Continuation and extension of the amateur's proven ability to contribute to the advancement of the radio art.
- (c) Encouragement and improvement of the amateur service through rules which provide for advancing skills in both the communication and technical phases of the art.
- (d) Expansion of the existing reservoir within the amateur radio service of trained operators, technicians, and electronics experts.

(e) Continuation and extension of the amateur's unique ability to enhance international goodwill.

While this writer is quite sure that the Commission is well aware of the basis and purpose of the Amateur Radio Service, it would seem that the ARRL could use some remedial education in the matter. It seems obvious from its actions that ARRL views its goals and the purpose of the Commission's Rules regarding the Amateur Radio Service to be the maintenance of the status quo at all costs. If this were not the unfortunate reality, the ARRL would not be seeking an unnecessary extension of the Commission's regulatory powers, particularly in such an oppressive, stagnating, and arbitrarily restrictive form as effectively codifying the status quo via mandatory band plans.

4. The ARRL's request is not supported by factual (or even anecdotal) evidence of even the existence of "the problem" let alone of the necessity for, or efficacy of, the ARRL's proposed "solution" (the Declaratory Ruling requested by the ARRL).

The ARRL's request to the Commission provides no justification for why the voluntary band plans should become mandatory. In their proposal, the ARRL writes that "A committee of the League's Board of Directors has recently reviewed the level of voluntary compliance with band plans in various amateur allocations and ... concluded that there has been some notable deterioration in adherence to the plans....". However, the ARRL's written request provides no evidence whatsoever to support this assertion. With no evidence supporting the existence of the alleged problems, there is no basis for effectively extending the Commission's rules in such an extraordinarily restrictive way as the ARRL suggests.

The ARRL does not appear to have even contemplated the wide variety of sound and rational reasons why amateurs might chose not to adhere to voluntary band plans as the ARRL alleges, nor has the ARRL explained why such alleged non-adherence would be detrimental or

problematic in a service whose purpose is intended to be primarily experimental and developmental in nature. One is forced to confront some fundamental questions in this area:

- Are the voluntary band plans out of date with contemporary Amateur operations?
- Is it because the voluntary band plans do not accommodate new modes of communication?
- Is it because existing, flawed policy has effectively "privatized" large tracts of Amateur Radio spectrum, where the Amateur bands are no longer available for experimentation and introduction of new modes and technologies by licensed Amateurs?

Finally, even if non-compliance with voluntary band plans were occasionally the cause of an interference problem (which has not been demonstrated in any convincing manner by the ARRL), mechanisms exist in the Commission's rules to deal with such infrequent occurrences on a case by case basis without the imposition of unnecessarily restrictive and stagnating limitations on the ability of amateurs to freely select their operating frequency and mode.

5. Conclusion and Recommendations

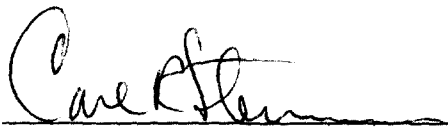
Since existing Commission rules are occasionally broken today by a variety of licensees (both Amateur and non-Amateur), there is no evidence provided that effectively codifying restrictive band plans into federal regulation will solve the alleged problem ... even if such a problem did in fact exist, despite the notable inability of the ARRL to provide a shred of valid evidence to support either the existence of such a problem or their claim that the voluntary nature of band plans in the Amateur Radio Service is the causative factor at the root of the alleged problem.

Even if non-compliance with voluntary band plans were a significant cause of an interference problem (which has not been demonstrated in any convincing manner by the ARRL), the

amateur community has always, with the Commission's support and encouragement, had an aspect of "self-policing" to it ... those who intentionally cause problems are most often, but not always, dealt with through the use of persuasion and peer pressure. Additionally, mechanisms exist in the Commission's Rules to deal with the relatively infrequent cases of intransigence on a case by case basis without the imposition of unnecessarily restrictive and stagnating limitations on the ability of all amateurs to freely select their operating frequency and mode.

It is unfortunate ... *in fact reprehensible* ... that the ARRL chose to attempt an "end run" around public scrutiny and comment in a case with implications of such magnitude and the Commission is to be commended for treating the ARRL's request as a Petition for Rule Making and establishing a public comment period rather than allowing the ARRL to succeed in circumventing proper procedures through the use of such tactics.

I respectfully request that the Commission DENY the ARRL request in all respects and make no changes to the existing system of voluntary band plans.

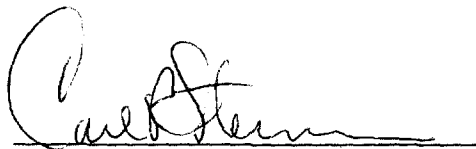
A handwritten signature in black ink, appearing to read "Carl R. Stevenson", written over a horizontal line.

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CERTIFICATE OF SERVICE:

On April 21, 1998, the Commission assigned this item file number RM-9259 and established a 30 day preliminary comment period. (Public Notice Report #2269) The public comment period ends on May 21, 1998. Therefore these comments are timely filed.

On May 13, 1998, I mailed a true and accurate copy of this document (described as a Statement of Opposition to the ARRL's Request for Declaratory Ruling in RM-9259) to ARRL General Counsel Christopher D. Imlay, of the Law Firm of BOOTH, FRERET, IMLAY & TEPPER, P.C., 5101 Wisconsin Avenue, N.W., Suite 307, Washington, DC 20016 as required by Sections §1.47 and §1.405 of the Commission's Rules (47 C.F.R. §1.47, 47 C.F.R. §1.405)

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Carl R. Stevenson, WA6VSE